

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“Agreement”) is made and entered into this [—] day of [____], 2021 (“Effective Date”) by and between **the City of Fishers, Hamilton County, Indiana**, an Indiana municipal corporation, by and through its municipal sewer utility (“Buyer”), and **Hamilton-Southeastern Utilities, Inc.**, an Indiana public utility corporation (“Seller”). Hereinafter, the Buyer and Seller may be individually referred to as a “Party” or jointly as the “Parties”.

RECITALS:

- A. Seller owns and operates a wastewater collection system that provides service to customers located within the certificates of territorial authority and indeterminate permits (“CTAs”) granted by the Indiana Utility Regulatory Commission (“IURC”) comprising Seller’s Fishers service area, as such area is graphically depicted on Exhibit A attached hereto and incorporated herein (the “Service Area”) (collectively referred to as the “Business”).
- B. Buyer currently owns and operates a municipal sewer utility pursuant to Ind. Code ch. 36-9-23.
- C. Buyer desires to acquire and Seller desires to sell the Assets (as hereinafter defined) of Seller relating to the Business pursuant to the terms and conditions of this Agreement.
- D. Buyer is prepared to render a comparable sewage disposal service without loss of continuity of service to the Service Area, and upon Closing, Buyer will own and merge into its existing service all of Seller’s Assets relating to the Business.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein and in exchange for other consideration the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 **Definitions and Related Matters**

For purposes of this Agreement and all documents executed in connection with this Agreement, the capitalized terms shall have the meanings assigned to them herein or in Schedule 1. The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

ARTICLE 2 **Purchase and Sale of Assets; Closing**

2.1 Transfer and Description of Assets. Subject to and upon all other terms and conditions of this Agreement, effective as of the Effective Time on the Closing Date, Seller shall sell, convey, transfer, assign, and deliver to Buyer free and clear of all Encumbrances, and Buyer shall acquire from Seller, all of Seller’s rights, title, and interest in and to all of Seller’s assets,

properties, business, and rights of every kind and description, whether tangible or intangible, real, personal, or mixed, as they pertain to the Service Area, other than the Excluded Assets, regardless of where located, which are, should, be, could be, or in the future would be part of or used in connection with the Business, including the following:

(a) all Real Property, including any easements, rights-of-way, rights of ingress or egress, and other rights granted to the Seller necessary for or used in furtherance of the operation of the Business, as set forth on Schedule 3.4(c);

(b) all Tangible Personal Property;

(c) all data and Records related to Seller's operation of the Business, including the customer list which shall include the service and billing address of all customers of Seller and, subject to applicable Law, copies of all Records described in Section 2.2(b);

(d) all Permits and all pending applications therefor, renewals thereof or exemptions therefrom which are necessary or advisable in the operation of the Business, including those listed in Schedule 3.9;

(e) all claims of Seller against third-parties, whether choate or inchoate, known or unknown, contingent or non-contingent, relating to the Assets and a tacking of time periods for any prescriptive easement or adverse possession claim; and

(f) all of the intangible rights and property of Seller utilized by Seller in the operation of the Business, including without limitation, all leases or other agreements relating to the Assets, and all rights and interests arising under or in connection with the assumed contracts to be assigned to Buyer as set forth in Schedule 2.1(f);

(g) any rights of Seller to provide sanitary sewer service to the Service Area;

(h) all franchises, permits, certificates, licenses, and tariffs issued by any Governmental Authority and owned, held, or used by Seller or any party affiliated with Seller that relates to the Business and that are capable of assignment or transfer;

(i) except as otherwise excluded herein, all machinery, equipment, vehicles, tools, supplies, fixtures, all titles and warranties therefor, and all maintenance and other files and records pertaining thereto, owned or controlled by the Seller and necessary for or used in furtherance of the operation of the Business;

(j) except as listed in the Excluded Assets, originals of all of the books, records, maintenance records, files, drawings, blueprints, operating manuals, maps, and other information used by Seller for the current operation of the Business or copies of such items if the originals are no longer in existence.

All of the foregoing shall be hereinafter referred to collectively as the "Assets".

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following Assets of Seller are not part of the sale and purchase contemplated hereunder, are excluded from the Assets, and shall remain the property of Seller after the Closing:

- (a) all insurance policies and rights thereunder;
- (b) all personnel Records and other Records that Seller is required by Law to retain in its possession;
- (c) all office furniture and equipment, including computers, used in the operation of the Business;
- (d) all rights in connection with and assets of the employee benefit plans and employment or independent contractor Contracts;
- (e) all rights of Seller under the Transaction Documents;
- (f) cash, cash equivalents and short-term investments, as listed and described in Schedule 2.2(f);
- (g) accounts receivable for monthly sewer service as to customers in the Service Area arising prior to the Effective Time as listed and described in Schedule 2.2(g) and as evidenced by the billing records of Seller as of the Closing Date;
- (h) Customer Service Connections, which shall remain the property of the customer;
- (i) a portion of the System Development Charges (“SDC”) and Contributions in Aid of Construction (“CIAC”) account balances as of the Effective Time, in an amount necessary to pay the unpaid income taxes actually due and owing by Seller on contributions in aid of construction made within the Service Area and customarily paid from such accounts, as listed and described in Schedule 2.2(i);
- (j) real estate and buildings listed and described in Schedule 2.2(j);
- (k) the CTA’s and assets listed in Schedule 2.2(l), which excluded assets are not used or useful in the operation of the Business in and around the Service Area; and
- (l) all data, licenses, technology, and Records related to Seller’s operation of the Business not owned by Seller, as listed and described in Schedule 2.2(l). For Excluded Assets identified in Schedule 2.2(l) regarding Seller’s GIS, SCADA, and customer billing system, Seller will cooperate in transferring the data, licenses, technology, and Records related to the Business from these systems to Buyer to the extent within the control of Seller, and the costs of operating such systems and any applicable licensing fees shall be borne by Buyer after the Closing.

All of the foregoing, including those Excluded Assets as listed and described in Schedule 2.2(f), (g), (i), (j), and (l), shall be hereinafter referred to collectively as the “Excluded Assets”.

2.3 Consideration.

- (a) Subject to Section 2.3(b), the consideration for the Assets shall be calculated in accordance with the following formula: The base purchase price for the Assets will be Ninety Million and 00/100 dollars (\$90,000,000.00) (the “Base Purchase Price”).

(i) At Closing, the Base Purchase Price will be divided by the number of equivalent dwelling units (“EDU’s”) for which Seller has collected SDC’s at the time of Closing (including any Escrow Account #2 EDU’s added after the Effective Date as described in Section 7.1(e)(ix) but excluding any Escrow Account #1 EDU’s added pursuant to the City Agreements described in Section 7.1(e)(viii)), and this value will be multiplied by 1,086 EDUs to reflect the 175 Noblesville customers being retained by Seller pursuant to Section 2.2(1), the product of this calculation being the “EDU Adjustment”.

(ii) At Closing, the Parties shall determine the 2020 and 2021 SDC and CIAC account balances to be transferred to Buyer (excluding: (a) CIAC balances for income taxes owed by Seller pursuant to Section 2.2(i) and (b) CIAC balances in Escrow Account #1). The sum of the 2020 and 2021 SDC and CIAC account balances, including the CIAC balance in Escrow Account #2 as of Closing (excluding the portion of the SDC payable to Fishers for wholesale treatment service), being the “CIAC Adjustment”.

(iii) If the CIAC Adjustment is less than the EDU Adjustment, the CIAC Adjustment will be subtracted from the EDU Adjustment, resulting in the “Base Purchase Price Adjustment”. The Base Purchase Price Adjustment will then be subtracted from the Base Purchase Price to arrive at the final Purchase Price. As an example, if the EDU Adjustment is \$3,000,000 and the CIAC Adjustment is \$1,500,000, the Base Purchase Price Adjustment would be \$1,500,000 (\$3,000,000 minus \$1,500,000), and the final Purchase Price would be \$88,500,000 (\$90,000,000 minus \$1,500,000).

(iv) If the CIAC Adjustment is greater than the EDU Adjustment, the positive difference between the CIAC Adjustment and the EDU Adjustment shall be added to the Base Purchase Price, resulting in a final Purchase Price greater than the Base Purchase Price. As an example, if the EDU Adjustment equals \$3,000,000 and the CIAC Adjustment equals \$3,100,000, the final Purchase Price would be \$90,100,000.

(v) The final value of (iii) or (iv) in this Section 2.3(a) (whichever may apply) being the “Purchase Price”.

The Assets shall be in substantially the same condition, absent normal wear and tear, as they were at the time of the appraisals contemplated by Section 2.3(b) and fully able to perform the functions they are intended to at the time of Closing. If any of the Assets are not able to perform the function they are intended to, the Buyer, at its option, may request an adjustment to the Purchase Price to compensate for the deterioration or loss of said Asset. In the event the Parties are not able to agree to the amount of the adjustment, the adjustment amount shall be the amount necessary to return the Asset to the condition it was in at the time of the appraisals contemplated by Section 2.3(b).

(b) Promptly following the date hereof but prior to the Closing Date, each Party shall engage a qualified appraisal firm (the “Appraisers”), to conduct an appraisal of the Assets in accordance with applicable Law (the “Appraisal”). The Parties shall reasonably cooperate with the Appraisers, including by providing all documentation reasonably requested by each Appraiser.

Each respective Party shall each bear the costs and expenses of the Appraisers engaged by that Party.

(c) If the Purchase Price is greater than the Appraisal, the Buyer shall, within ten (10) Business Days of the final Appraisal, have the right to terminate this Agreement, which, upon such termination, shall become null and void and be of no further force and effect.

2.4 Liabilities. The Buyer shall not be responsible for any of the Liabilities of Seller except those set out as Assumed Liabilities on Schedule 2.4 attached hereto. Any Liability of Seller that is not an Assumed Liability shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. Buyer does not assume and shall not be liable for any expense, assessment, exposure, fine, penalty, liability, act or omission of any kind whatsoever imposed or required by any third party, whether known or unknown, contingent, liquidated or not liquidated, arising or accruing under contract, tort, or pursuant to statute, rule, ordinance, law, regulation or otherwise, arising or accruing before the Effective Time on the Closing Date, regardless of when the claim is made.

2.5 Closing. The purchase and sale provided for in this Agreement will take place at the office of the Title Insurer or at such location and time of day agreed upon by the parties (the “Closing”). The date of the Closing shall be after the Indiana Utility Regulatory Commission (the “IURC”) issues an Order approving Seller’s sale, assignment, and transfer of the Assets and the appeal period has expired with no appeal filed. In no event shall the Closing take place after December 31, 2021, unless mutually agreed to by the Parties. If the Parties are unable to mutually agree on a Closing date after December 31, 2021, either Party may terminate this Agreement, subject to the terminating Party paying the non-terminating Party’s reasonable out-of-pocket expenses for the Contemplated Transaction. Closing shall be effective as of 5:00 pm local time (the “Effective Time”) on the actual date of Closing (the “Closing Date”).

2.6 Taxes. All real and personal property taxes and installments of assessments with respect to the Assets that are due for periods during which such real and personal property was owned by Seller shall be paid by Seller on or prior to the Closing Date or, to the extent such taxes become due and payable following the Closing, at the time such taxes become due and payable. Seller shall be responsible for and shall duly and timely pay any gross receipt taxes, income taxes (including any taxes due or owing for contributions in aid of construction), and other personal property taxes as they become due and payable. All real and personal property taxes and installments of assessments with respect to the Assets incurred after the Closing shall be the responsibility of Buyer.

2.7 Closing Obligations.

(a) At or prior to Closing, Seller shall deliver to Buyer the following documents, duly executed:

(i) a Bill of Sale for all of the Assets that are Tangible Personal Property in a form reasonably acceptable to Buyer (“Bill of Sale”);

(ii) an assignment of all of the Assets that are intangible personal property in a form reasonably acceptable to Buyer (“Assignment and Assumption Agreement”);

(iii) for each interest in Real Property identified on Schedule 3.4(c), a recordable warranty deed or such other appropriate document or instrument of transfer or approval, as the case may require, each in form and substance satisfactory to Buyer and its legal counsel. Notwithstanding the fact that the same may not be listed on Schedule 3.4(c), Seller must provide easements or other transferable property rights to Buyer for all mains used in the Business, which are not located on or in public rights-of-way, and must provide assignments of public rights-of-way Permits with only those conditions acceptable to Buyer for all mains located in municipal, county or state owned public rights-of-way;

(iv) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may be reasonably requested by Buyer, each in form and substance reasonably satisfactory to Buyer;

(v) a certificate as to the accuracy of Seller's representations and warranties as of the date of this Agreement and as of Closing in accordance with Section 5.1(a) and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing in accordance with Section 5.1(b);

(vi) a certificate of the company secretary of Seller, dated as of the Closing, certifying: (A) that attached are true copies of the duly adopted resolutions of the Seller's board of directors authorizing the execution of this Agreement and the purchase of all Assets; and (B) the incumbency, signatures and authority of the officer or officers of Seller executing this Agreement or any agreement contemplated hereby on behalf of Seller

(vii) Each of the Transaction Documents and any other agreements necessary to effectuate this Agreement;

(viii) Non-foreign affidavit, no-lien affidavit, waiver and release of lien or such other forms as are customarily required for issuance of the title insurance policy;

(ix) Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations reasonably necessary to consummate the transactions contemplated by this Agreement and the Transaction Documents that are approved by Seller, including, but not limited to, those instruments identified by the Title Insurer insuring the Real Property; and

(x) a certificate of existence issued by the Secretary of State of Indiana with respect to Seller, dated not earlier than thirty (30) days prior to Closing.

(xi) All of the Assets, the delivery of which may not be accomplished by delivery of the foregoing documents and instruments.

(b) At or prior to Closing, Buyer shall deliver to Seller, the following documents, duly executed, or funds:

(i) The Purchase Price, by wire transfer or other immediately available funds to an account specified by the Seller;

(ii) a certificate as to the accuracy of Buyer's representations and warranties as of the date of this Agreement and as of Closing in accordance with Section 5.2(a) and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing in accordance with Section 5.2(b); and

(iii) Certified copies of resolutions and ordinances, certifying that Buyer has obtained all required City approvals authorizing the execution of this Agreement and the purchase of all Assets.

ARTICLE 3 **Inspection Period**

3.1 Inspection Period. The obligation of each Party to consummate the transactions contemplated hereunder is subject to satisfaction of the following conditions by or before the Inspection Period:

(a) *Property Inspections.* Buyer shall cause the Property Inspections to be completed for the Assets and provide to Seller (or its designee), promptly after receipt thereof, true, correct, and complete copies of all results of, and reports received in connection with, the Property Inspections. Seller shall have made any plans or specifications for the Assets and other information related to the operation of the Business available to Buyer, or its representatives, for inspection during normal business hours and upon reasonable advance notice from Buyer. Seller agrees that, in connection with the Property Inspections, it shall promptly review all results and reports received and, together with Buyer, determine whether the Assets are suitable for the transaction.

(b) *Condition of Assets.* The Assets shall be in a condition satisfactory to Buyer for operation of the Business after the completion of any appropriate inspections, reviews, and audits.

(c) *Title.* Buyer shall have obtained the Commitment with respect to the Real Property.

(d) *Survey.* Buyer shall have obtained the Survey in form and substance reasonably acceptable to Buyer.

(e) *Title Condition.* Buyer shall have determined that the Title Insurer shall: (i) insure, for its fair market value, as applicable, marketable, fee simple title to the Real Property in the name of Buyer, free of all Title Defects, other than those Title Defects that Buyer is deemed to have waived pursuant to the terms and conditions of this Agreement; and (ii) issue such endorsements as Buyer reasonably deems to be necessary or appropriate.

(f) *Environmental Condition.* Buyer shall have determined that there: (i) is no contamination or pollution of the Real Property, or any groundwater thereunder by any Hazardous Materials, or substance in violation of any Environmental Laws; and (ii) are no underground storage tanks located on the Real Property.

3.2. Time for Satisfaction. Upon execution of this Agreement, the Parties shall coordinate the timing of and pursue the satisfaction of conditions contemplated in Section 3.1,

above. The Parties agree to cooperate in good faith and use reasonable due diligence in promptly satisfying all conditions contained herein. In the event the obligations contained in Section 3.1 have not been satisfied by or before August 15, 2021, Buyer may terminate this Agreement, but only if it has completed all of its obligations required by Section 3.1 and subject to Seller having an opportunity to cure any incomplete obligation required by Section 3.1 within 15 days.

ARTICLE 4

Representations and Warranties of Seller

Seller hereby makes the following representations and warranties to Buyer as of the date of this Agreement and as of the Closing:

4.1 Organization. Seller is a public utility corporation duly organized and validly existing under the Laws of the State of Indiana. Seller has the power and authority to own, lease and operate its assets (including the Assets) and to conduct the Business as it is now being conducted.

4.2 Enforcement; Authority; No Conflict.

(a) Seller has the power to enter into and perform this Agreement and the other Transaction Documents to which it is a party and to consummate the Contemplated Transaction.

(b) The execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party by Seller, and the consummation of the Contemplated Transaction, have been duly and validly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller (and all documents required to be executed and delivered by Seller at Closing shall be duly executed and delivered by Seller), and this Agreement constitutes, and at the Closing such documents shall constitute, the valid and binding obligations of Seller, enforceable in accordance with their terms except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, or similar Laws now or hereafter in effect relating to creditors' rights generally and (ii) equitable defenses at the discretion of the court before which any Proceeding therefor may be brought (clauses (i) and (ii) collectively, the "Bankruptcy and Equity Exceptions").

(c) Neither the execution, delivery, and performance of this Agreement and the other Transaction Documents to which Seller is a party by Seller nor the consummation of the Contemplated Transaction will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with, or result in a violation of any provision of the Organizational Documents of Seller;

(ii) contravene, conflict with, or result in a violation of or give any Governmental Authority or other Person the right to challenge any of the Contemplated Transaction or to exercise any remedy or obtain any relief under any Laws or any Order to which Seller or any of the Assets may be subject, or require the consent of or other action by a Governmental Authority not referenced in this Agreement;

(iii) contravene, conflict with, or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate, or modify any Permit or other authorization by a Governmental Authority that is held by Seller or that otherwise relates to the Business or any of the Assets;

(iv) contravene, conflict with, or result in a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Seller or to a loss of any benefit to which Seller is entitled under any provision of any Contract to which Seller is a party, or by which any of the Assets or any other material assets and properties of Seller are bound or subject;

(v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets, except for Permitted Encumbrances or as contemplated by this Agreement; or

(vi) contravene or conflict with Buyer's obligation to provide wholesale treatment service to Seller's Wayne Township CTA pursuant to the Wholesale Sewer Agreement for the East Service Area entered into by Buyer and Seller dated on or around December 7, 1988, as amended or obligation to provide wholesale treatment service to Seller's customers with Noblesville addresses as referenced in Schedule 2.2(1) pursuant to the Wholesale Sewer Agreement for the North Service Area entered into by Buyer and Seller dated on or around August 2, 1989, as amended.

4.3 Assets.

(a) Seller has good and marketable title to, valid leasehold interest in, or valid licenses to use, all of the Assets, free and clear of all Encumbrances, other than Permitted Encumbrances. The use of the Assets is not subject to any Encumbrances, other than Permitted Encumbrances, and such use does not encroach on the property or the rights of any Person.

(b) The Assets are sufficient for, and constitute all the assets, properties, business, and rights of every kind and description, and services required for, the continued conduct and operation of the Business by Buyer in substantially the same manner as currently conducted and operated by Seller. The Assets, taken as a whole, comprise all the assets, properties, business, and rights of every kind and description used or held for use in, or useful or necessary to the operation of the Business as currently operated by Seller. There are no Assets that are owned by any Person other than Seller that will not be licensed or leased to Buyer at Closing under valid license arrangements or leases on terms no less favorable to Buyer than the terms applicable to Seller as of the date hereof under such license agreements or leases.

(c) All Assets are in good operating condition and repair (except for normal wear and tear) and are usable in the ordinary course of the Business and are being operated in conformity in all material respects with all applicable Laws and the terms of any Contracts to which Seller is a party or by which such Assets are subject or bound.

(d) The management, officers and directors of Seller have no Knowledge of material facts adversely affecting the physical condition of the Assets related to the Business which are not readily observable or which have not been disclosed or provided by Seller to Buyer in

connection with the transactions contemplated by this Agreement and the Transaction Documents or otherwise.

4.4 Real Property.

(a) With respect to all real property owned by Seller in connection with its operation of the Business (including any easements and rights-of-way) (the “Owned Real Property”), there is no condemnation, expropriation or other Proceeding in eminent domain pending or, to the Knowledge of Seller, threatened affecting any parcel of Owned Real Property or any interest therein, except as listed and described in Schedule 4.4(a). Seller has made available to Buyer all title insurance policies, property condition reports, and surveys for each parcel of Owned Real Property. Seller has exclusive possession of each parcel of Owned Real Property. There are no outstanding options, rights of first offer, or rights of first refusal to purchase any Owned Real Property or any portion thereof or interest therein. Seller is not a party to any agreement or option to purchase any real property or interest therein. Buyer hereby assumes, as of the Effective Time on the Closing Date, all costs of relocation of sewer utility lines as listed and described in Schedule 4.4(a).

(b) Seller has made available to Buyer a correct and complete copy of each lease, sublease, license or other Contract, currently in effect and as amended to date (each, a “Lease”), under which any real property leased or subleased has been granted to Seller in connection with its operation of the Business (including any easements and rights-of-way) (the “Leased Real Property” and together with the Owned Real Property, the “Real Property”). Neither Seller nor, to the Knowledge of Seller, any other party to any such Lease, is in breach or default, and no event has occurred (including the failure to obtain any consent) which, with notice or lapse of time or both, would constitute a breach or default under or permit termination or material modification of, or acceleration of a material amount of rents due under, any Lease.

(c) The Real Property is set forth on Schedule 4.4(c).

4.5 Financial Statements.

(a) The audited balance sheet of Seller as of December 31, 2019 and 2020, and the related audited statement of income and cash flows of Seller for the years ended December 31, 2019 and 2020 (the “Financial Statements”), were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto), and fairly present in all material respects the financial position of Seller as of December 31, 2019 and 2020, and its results of operations and cash flows for the fiscal years then ended. True, correct and complete copies of such Financial Statements have been made available to Buyer.

(b) The unaudited balance sheet (the “Balance Sheet”) and the related unaudited statement of income of Seller for the five (5) months ended May 31, 2021 (the “Balance Sheet Date”) were prepared in accordance with GAAP, applied on a consistent basis throughout the period indicated, and fairly present in all material respects the financial position of Seller as of the Balance Sheet Date and its results of operations for the period referred to therein, subject to normal year-end adjustments (which are not, in the aggregate, reasonably expected to be material) and the absence of notes otherwise required by GAAP.

(c) The Business does not have any Liabilities except: (i) Liabilities reflected or reserved on the face of the Balance Sheet or those specifically set out in Schedule 2.4 which are assumed by the Buyer; (ii) Liabilities in connection with the Contemplated Transaction; or (iii) Liabilities incurred in the ordinary course of business since the Balance Sheet Date (none of which is, individually or in the aggregate, material or results from, arises out of, or relates to any breach or violation of, or default under, any Contract or Laws).

4.6 Taxes.

(a) Seller has filed all Tax Returns required to be filed under applicable Law arising from its ownership or operation of the Business, and all such Tax Returns were correct and complete in all material respects.

(b) Seller has timely paid all material Taxes due from or with respect to it arising from its ownership or operation of the Business, except Taxes that are being contested in good faith as set forth on Schedule 4.6.

(c) Seller has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing any employee, independent contractor, creditor, stockholder or other third Person, and all Forms W-2 and 1099 required with respect thereto have been properly and timely filed or provided.

(d) No Proceeding or audit is now in progress with respect to Seller regarding Taxes, and Seller has not received written notice of any pending or threatened Proceeding or audit against it (which remains outstanding) from any applicable Governmental Authority.

(e) Seller has not waived any statute of limitations in respect of any material Taxes or agreed to any extension of time with respect to a material Tax assessment or deficiency.

(f) Seller is not, nor has been, a party to any understanding or arrangement described in Section 6662(d)(2)(C)(ii) of the Code or any "listed transaction" as defined in Section 6707A(c)(2) of the Code and Treasury Regulation § 1.6011-4(b)(2).

4.7 Contracts. Set forth on Schedule 4.7 is a complete and correct list of all Contracts (a) by which any of the Assets are bound or affected or (b) related to the Business to which Seller is a party ((a) and/or (b), the "Material Contracts"). Seller has delivered or caused to be delivered to Buyer correct and complete copies of each Material Contract (including all amendments thereto) or a description of the terms of each Material Contract which is not in writing, and all documents affecting the rights or obligations of any party thereto. The Material Contracts have not been modified or amended except as disclosed on Schedule 4.7. Each Material Contract is valid and enforceable against Seller in accordance with its terms and is in full force and effect, and to the Knowledge of Seller, each Material Contract constitutes a legal, valid and binding obligation of the other parties thereto, enforceable against them in accordance with its terms. To the Knowledge of Seller, no default and no event which, with the giving of notice, lapse of time, or both, would be a default has occurred under any Material Contract. To the Knowledge of Seller, there are no setoffs, counterclaims or disputes existing or asserted with respect to such Material Contracts, and Seller has not made any agreement with any other party thereto for any deduction from or increase to any amount payable thereunder. To the Knowledge of Seller, there are no facts, events or occurrences which in any way impair the validity or enforcement of any Contract or could

reasonably be expected to reduce or increase the amounts payable thereunder. Seller has not, directly or indirectly, by operation of Law or otherwise, transferred or assigned all or any part of its right, title or interest in and to any Material Contract to any other Person. There are no Proceedings pending nor, to the Knowledge of Seller, threatened against any party to any of the Material Contracts. With respect to the Developer Contracts, Seller has fully satisfied and there are no outstanding or future financial obligations to be collected or owed to any developer or person relating to the cost of installing any sewer facilities or under any Developer Contract or contributions in aid of construction, including but not limited to no revenue allowances outstanding, subsequent connector fees outstanding, or line frontage fees outstanding.

4.8 Environmental Matters. Except as set forth on Schedule 5.8:

(a) Seller is and at all times has been in material compliance with and has not been and is not in violation of or liable under any applicable Environmental Law. Seller has no basis to expect nor has it received any actual or threatened Order, notice or other communication from any Governmental Authority or private citizen acting in the public interest of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to the Assets or any other properties (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the Real Property or any other real property at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or threatened claims, Encumbrances or other restrictions of any nature, resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the Assets or any other properties (whether real, personal or mixed) in which Seller has or had an interest.

(c) Neither Seller nor, to the Knowledge of Seller, any other Person for whose conduct it is or may be held to be responsible has received any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Materials or any alleged, actual or potential violation or failure to comply with any Environmental Law or of any alleged, actual or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to the Assets or any other properties (whether real, personal or mixed) in which Seller has or has had an interest or with respect to any other real property to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) Neither Seller nor, to the Knowledge of Seller, any other Person for whose conduct it is or may be held to be responsible has any Environmental, Health and Safety Liabilities with respect to the Assets or any other properties (whether real, personal or mixed) in which Seller (or any predecessor) has or has had an interest or at any property geologically or hydrologically adjoining the Assets or any other properties (whether real, personal or mixed).

(e) There are no Hazardous Materials present on or in the Environment at the Real Property or, to the Knowledge of Seller, at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the Real Property or such adjoining property or incorporated into any structure therein or thereon except in material compliance with all applicable Environmental Laws. Neither Seller nor, to the Knowledge of Seller, any other Person for whose conduct it is or may be held to be responsible has permitted or conducted, or is aware of, any Hazardous Materials with respect to the Assets or any other properties (whether real, personal or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws.

(f) There has been no Release or threat of Release, of any Hazardous Materials at or from the Assets or any other properties (whether real, personal or mixed) in which Seller has or has had an interest, or any geologically or hydrologically adjoining property, whether by Seller or any other Person.

(g) Seller has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller pertaining to Hazardous Materials in, on or under the Real Property, or concerning compliance by Seller or any other Person for whose conduct it is or may be held to be responsible, with Environmental Laws, said reports, studies, etc. to include without limitation, any and all Phase I environmental reports now or hereafter in the possession or control of Seller.

4.9 Permits; IURC.

(a) Seller has all permits, licenses, authorizations, consents and approvals from or of, and has made all material filings, applications and registrations with, all Governmental Authorities required to own and operate the Business as now conducted (collectively, "Permits"), including but not limited to those set forth on Schedule 4.9(a), and all such Permits are in full force and effect and have not been violated in any material respect, and no suspension, cancellation or revocation of any such Permit is pending or, to the Knowledge of Seller, threatened. There exists no fact or circumstance which is reasonably likely to cause any Permit to be revoked or materially altered after the Closing Date.

(b) With respect to any Permits that are scheduled to expire within six months following the date of this Agreement, any applications for renewal of such Permits have been or will be duly filed by Seller with the applicable Governmental Authority within the time frame required under applicable Law.

(c) All material filings required to be made by Seller since January 1, 2019 with the IURC have been timely filed.

4.10 Insurance.

(a) Seller maintains and has maintained appropriate insurance necessary for the full protection of all of its Assets, Business, operations, products and services. Schedule 4.10(a) sets forth a list of the insurance policies as of the date of this Agreement that insure the properties, assets or operations of the Business, or the Assets. There are no claims by Seller pending under

any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or in respect of which such underwriters have reserved their rights, and all such policies are in full force and effect, and no written notice of cancellation, termination or non-renewal has been received with respect to any such policy. Seller is not in default with respect to any provisions contained in any such insurance policies and, to the Knowledge of Seller, no insurance provider is in default with respect to such insurance policies.

(b) Seller has no outstanding guarantees or other credit support issued or entered into in connection with the Assets or the Business and no guarantees or other credit support is required to satisfy any contractual, statutory, or regulatory requirement applicable to Seller with respect to the Business or Assets.

4.11 Intellectual Property.

(a) There are no registrations or applications for registration for Intellectual Property Rights owned by Seller in connection with its ownership and operation of the Business. All of the Intellectual Property Rights owned by Seller in connection with its ownership and operation of the Business are subsisting, and to the Knowledge of Seller, valid and enforceable.

(b) To the Knowledge of Seller, no Intellectual Property Right owned by Seller in connection with its ownership and operation of the Business is being infringed or misappropriated by any third party, and Seller is not infringing or misappropriating any valid and enforceable Intellectual Property Right owned by any third party, except, in any case, where such infringement or misappropriation would not result in a Material Adverse Effect.

(c) To the Knowledge of Seller, there have been no actual or alleged theft or unauthorized disclosure, use, access, intrusions, or breaches of security, of: (i) the Systems; (ii) any personal information, payment card information, confidential or proprietary data or any other such information collected, maintained or stored by or on behalf of Seller in connection with its ownership and operation of the Business; or (iii) any trade secrets and other confidential information that constitutes Intellectual Property Rights owned by Seller in connection with its ownership and operation of the Business, except where such theft or unauthorized disclosure, use, access, intrusions, or breaches of security would not result in a Material Adverse Effect.

4.12 Absence of Changes. Since the Balance Sheet Date, (i) the Business has been operated in the ordinary course of business and (ii) there has not been any event, occurrence or development which, individually or in the aggregate, has had or would have a Material Adverse Effect.

4.13 Proceedings. Other than as set forth on Schedule 4.13, there are no Proceedings pending or, to the Knowledge of Seller, threatened against Seller or directly affecting any of the Assets or the Business by or on account of any Person or before any Governmental Authority and there is no valid basis for any such Proceeding. Seller has not been charged with, nor is it under investigation with respect to any charge which has not been resolved to their favor concerning any violation of any applicable Law with respect to any of the Assets or the Business and there is no valid basis for any such charge or investigation. No judgment, Order, writ, injunction, decree, assessment or other command of any Governmental Authority affecting Seller or any of the Assets or the Business has been entered which is presently in effect. There is no Proceeding pending or,

to the Knowledge of Seller, threatened which challenges the validity of this Agreement or the Contemplated Transaction or otherwise seeks to prevent, directly or indirectly, the consummation of the Contemplated Transaction, nor is there any valid basis for any such Proceeding.

4.14 Compliance with Laws. Seller is, and since January 1, 2020, has been, in compliance in all material respects with all Laws applicable to the Assets and the operation of the Business and has not committed any material violation of any Law applicable to the Assets and/or operation of the Business. Seller has not received any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Law or (ii) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. The Assets, in their current condition, are capable of complying with all Laws in all material respects.

4.15 Affiliate Obligations. There is no intercompany agreement, account, Contract, or transaction among Seller or any of its Affiliates that constitutes an Asset.

4.16 Brokers. Seller has no Liability or obligation to pay any fees or commissions to any broker, finder, or agent in connection with the negotiation, execution or delivery of this Agreement or any other Transaction Document.

4.17. Employee Benefits. Seller maintains no profit sharing, deferred compensation, bonus arrangements, pension and retirement plans, programs and arrangements, welfare benefit plans or other employee benefit plans (collectively, "Employee Benefit Plan") that will be applicable to Buyer following the Closing. No employee of Seller is owed any compensation, including bonuses, that has not been timely paid. Seller shall pay any such Seller employee all compensation due for services provided through the date of Closing.

4.18. Full Disclosure. The representations and warranties made by Seller in this Agreement and the certifications furnished or to be furnished to Buyer, pursuant to this Agreement, do not contain or will not contain any untrue statement of a material fact, or does not omit, or will not omit, to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE 5

Representations and Warranties of Buyer

Buyer hereby makes the following representations and warranties to Seller as of the date of this Agreement and as of the Closing:

5.1 Organization. Buyer is a municipal corporation duly organized and validly existing under the Laws of the State of Indiana and at Closing has the power and authority to own, lease and operate the Assets and to conduct the Business as it is now being conducted.

5.2 Enforcement; Authority; No Conflict.

(a) Buyer has the power to enter into and perform this Agreement and the other Transaction Documents to which it is a party and to consummate the Contemplated Transaction.

(b) The execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party by Buyer, and the consummation of the Contemplated Transaction, will, at the Effective Time on the Closing Date, have been duly and validly authorized by all necessary action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer (and all documents required to be executed and delivered by Buyer at Closing shall be duly executed and delivered by Buyer), and this Agreement constitutes, and at the Closing such documents shall constitute, the valid and binding obligations of Buyer, enforceable in accordance with their terms.

(c) Neither the execution, delivery, and performance of this Agreement and the other Transaction Documents to which Buyer is a party by Buyer nor the consummation of the Contemplated Transaction will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with, or result in a violation of: (A) the ordinances or statutes governing Buyer in the Contemplated Transaction; or (B) any resolution adopted by the municipal governing body of Buyer;

(ii) contravene, conflict with, or result in a violation of or give any Governmental Authority or other Person the right to challenge (other than any rights of remonstrance provided by the statutory process Buyer must complete to consummate the Contemplated Transaction) any of the Contemplated Transaction or to exercise any remedy or obtain any relief under any Laws or any Order to which Seller or any of the Assets may be subject;

(iii) contravene, conflict with, or result in a violation of any of the terms or requirements of or give any governing body of Buyer the right to revoke, withdraw, suspend, cancel, terminate, or modify any Permit or other authorization by a governing body of Buyer that is held by Seller or that otherwise relates to the Business or any of the Assets; or

(iv) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets, except as contemplated by this Agreement.

5.3 Proceedings. There are no Proceedings pending or, to the Knowledge of Buyer, threatened against or affecting Buyer that challenges or seeks to prevent, enjoin, alter or materially delay the Contemplated Transaction. Buyer is not a party or subject to any Order other than orders of general applicability, and is not in default thereunder, nor is there any valid basis for any such Proceeding.

ARTICLE 6

Conditions Precedent to Closing

6.1 Conditions Precedent to the Obligations of Buyer. Buyer's obligations to consummate the Contemplated Transaction are subject to the satisfaction in full, unless expressly waived in writing by Buyer, of each of the following conditions:

(a) **Representations and Warranties.** Each of the representations and warranties of Seller contained in Article 4 is true, correct and accurate from the date of this Agreement and as of the Closing Date shall be true, correct and accurate as though restated on and as of such date (except in the case of any representation and warranty that by its terms is made as of a date specified therein, which shall be accurate as of such date) except where the failure of any such

representation or warranty to be true, correct and accurate would not, individually or in the aggregate, be material to the Business; provided, however, that any representation or warranty of Seller contained in Article 4 qualified by materiality, Material Adverse Effect or similar qualifications shall be deemed not to be so qualified for the purposes of this Section 6.1(a);

(b) Covenants. Seller shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing;

(c) Transaction Documents. Buyer (or the applicable City Bodies) and Seller, each exercising commercially reasonable discretion, shall have approved the form and substance of all Transaction Documents.

(d) The Assets shall be in a condition satisfactory to Buyer.

(e) No Loss or Destruction. The Assets shall not have suffered any material loss, damage, destruction, casualty, or condemnation, regardless of whether covered by insurance.

(f) Release of Encumbrances. All Encumbrances on the Assets, title to which is required by this Agreement to be transferred to Buyer free and clear other than of Permitted Encumbrances, shall have been released or waived by Buyer in writing.

(g) Proceedings. No Order shall be in effect and no Proceeding by any Person shall be threatened or pending before any Governmental Authority, or before any arbitrator, wherein an unfavorable Order would: (i) prevent consummation of the Contemplated Transaction; (ii) reasonably be expected to cause the Contemplated Transaction to be rescinded following consummation; (iii) adversely affect the right of Buyer to own any of the Assets; or (iv) adversely affect the Business prospects, value or condition of any of the Assets or the Business;

(h) Approvals. Buyer shall have received prior to Closing all necessary approvals, including those from the applicable City Bodies, and taken all steps required by statute to accept transfer of the Assets and Business thereunder, including, without limitation, (i) obtaining all necessary approvals and authorizations to issue the Bonds in accordance with all laws applicable to the issuance of such bonds and upon such terms, conditions, and interest rates as are acceptable to Buyer in its commercially reasonable discretion to make Bond Proceeds available at Closing to finance the Purchase Price pursuant to this Agreement, and (ii) completing all procedures in accordance with Ind. Code § 36-9-23 *et. seq.*, necessary to establish just and equitable fees as determined by Buyer for the Service Area;

(i) Closing Deliveries. Seller shall have delivered to Buyer the Closing requirements set forth in Section 2.6(a);

(j) Material Adverse Effect. Buyer has determined that there has not been any event, occurrence or development which, individually or in the aggregate, has had or would have a Material Adverse Effect.; and

(k) Schedules. Buyer shall have, in its sole discretion, approved and be agreeable to the form and content of each and every schedule attached hereto or referred to herein, such approval being subject to Buyer's satisfaction and acceptance of matters arising out of and related

to such schedules after review, including but not limited to decrees, orders, and litigation affecting the Assets.

6.2 Conditions Precedent to Obligations of Seller. The Seller's obligation to consummate the Contemplated Transaction is subject to the satisfaction in full, unless expressly waived in writing by Seller, of each of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Buyer contained in Article 5 is true, correct and accurate as of the date of this Agreement and, as of the Closing Date, shall be true, correct and accurate as though restated on and as of such date (except in the case of any representation and warranty that by its terms is made as of a date specified therein, which shall be accurate as of such date) except where the failure any such representation or warranty to be true, correct and accurate would not, individually or in the aggregate, materially impair Buyer's ability to consummate the Contemplated Transaction;

(b) Covenants. Buyer shall have performed and complied in all material respects with all covenants required by this Agreement to be performed and complied with by Buyer prior to or at Closing;

(c) Closing Deliveries. The Buyer shall have delivered to Seller the Closing requirements set forth in Section 2.6(b); and

ARTICLE 7 Covenants and Special Agreements

7.1 Covenants of Seller Prior to Closing. Seller covenants and agrees that during the period from the date hereof until Closing:

(a) Non-Solicitation. Unless and until such time as this Agreement is terminated pursuant to Article 9, Seller shall not, and will cause each employee, officer, governing body, and agent not to, directly or indirectly: (i) submit, solicit, initiate, encourage or discuss any proposal or offer from any Person relating to any sale of all or any portion of the Assets or a sublease or assignment of any lease or any similar transaction involving Seller and the Business or the Assets; (ii) enter into any agreement or commitment related to any such transaction; or (iii) furnish any information with respect to or assist or participate in or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing. Seller shall notify Buyer immediately if any Person makes any proposal, offer, inquiry or contact with respect to any of the foregoing.

(b) Access. Upon reasonable prior notice by Buyer, Seller shall: (i) furnish Buyer and its financial and legal advisors with copies of all such Contracts, books and Records and other existing documents and data as Buyer may reasonably request; (ii) furnish Buyer and its financial and legal advisors with such additional financial, operating and other data and information related to the Business as Buyer may reasonably request; (iii) permit Buyer or its representatives to conduct such physical inspections and environmental audits of the Real Property, as requested by Buyer; and (iv) permit Buyer or its representatives to conduct interviews of employees of Seller.

(c) Ordinary Course. Seller shall carry on the operation of the Business in the ordinary course of business, consistent with prior practice, not introduce any materially new method of management or operation, and use reasonable efforts to preserve the Business and conserve the goodwill and relationships of Seller's customers, suppliers, Governmental Authorities and others having business relations with it. Seller shall not engage in any activity or transaction which is inconsistent with the terms of this Agreement. Notwithstanding the foregoing, from the Execution Date through the Closing Date, Seller shall not, without prior written consent of Buyer: (i) sell, transfer, assign, lease, or otherwise dispose of any of the Assets, or cause or permit any of the Assets to become subject to an additional Encumbrance other than a Permitted Encumbrance, (ii) increase any liabilities or obligations of the Business other than in the ordinary course of business consistent with past practices, including, without limitation, any capital expenditure program; or agree to take or omit to take any action that would cause any of the representations or warranties made by Seller herein to be untrue or incorrect, or agree to take or omit to take any such action.

(d) Liens; Encumbrances. Seller shall not enter into or assume any mortgage, pledge, security agreement or other title retention agreement or permit any Encumbrance to attach to any of the Assets, whether now owned or hereafter acquired.

(e) Further Covenants.

(i) Reports. Seller shall duly and timely file all reports required to be filed with any Governmental Authority and will promptly pay when due all Taxes, assessments and governmental charges including interest and penalties levied or assessed, unless diligently contested in good faith by appropriate Proceedings;

(ii) Condition of Property. Consistent with past practice, Seller shall maintain and keep the Assets in substantially the same condition as of the date hereof, normal wear and tear excepted, and shall promptly repair any and all damage that may occur to any Assets;

(iii) Insurance. Seller shall maintain in full force and effect all policies of insurance now in effect, including, without limitation, adequate fire and extended insurance coverage for the cost of any repairs to the Assets that may be required by casualty damage, up and through the Effective Time on the Closing Date, but not thereafter. The risk of loss during the said period of time shall fall upon Seller. The risk of loss shall pass to Buyer at the Effective Time on the Closing Date;

(iv) No Breach or Default of Contracts. Seller shall not do any act or omit any act or permit any omission to act which will cause a breach or default by Seller of any Contract;

(v) Supplies. Seller shall keep supplies at a level sufficient to operate the Business in accordance with past practice;

(vi) Contracts. Seller shall not enter into any Contract as to the Business without the prior, written consent of Buyer; and

(vii) Related Person Transactions. Seller shall not enter into any transaction with any Related Person as to the Business except as listed and described in Schedule 7.1(e)(vii).

(viii) City Projects. Seller acknowledges that between the Effective Date of this Agreement and Closing, Buyer will negotiate and enter into certain project agreements whereby public funds or property tax incentives are committed to support the project, including but not limited to, “Geist Waterfront Park” (10811 and 10959 Olio Road, Fishers, Indiana), “Stevanato” (0 E. 126th Street, Fishers, Indiana), Fire Station 97 (0 E 136th Street), and development at 0 Kincaid Drive, Fishers, Indiana (“City Agreements”). To the extent the City Agreements are entered into prior to Closing and result in the payment of SDC’s to Seller prior to Closing, Seller agrees to place these SDC funds into an escrow account with an escrow agent to be selected by Seller (“Escrow Account #1”), and such funds shall be transferred to Buyer upon Closing. If for whatever reason Closing does not occur, Seller shall retain the SDC funds for its own use.

(ix) Additional SDC’s Collected by Seller. Seller agrees that any SDC funds (excluding the portion of the SDC payable to Fishers for wholesale treatment service) received by Seller for the Service Area after the Effective Date but prior to Closing (excluding any SDC’s for the City Projects described in Section 7.1(e)(viii)) shall be placed into an escrow account managed by an escrow agent to be selected by Seller (“Escrow Account #2”), and such funds shall be transferred to Buyer upon Closing. If for whatever reason Closing does not occur, Seller shall retain the SDC funds for its own use.

7.2 Regulatory Compliance; Consents.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of Buyer and Seller shall use its reasonable best efforts to assist, consult with and cooperate with each other and any other parties in doing all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Contemplated Transaction, including using reasonable best efforts to accomplish the following: (i) the taking of all actions necessary to cause the conditions to the Closing set forth in Article 6 to be satisfied as promptly as practicable; (ii) the obtaining of all Permits and Consents from all third parties and all Governmental Authorities necessary or advisable to consummate, or in connection with, the Contemplated Transaction; (iii) the making of all necessary registrations and filings promptly with the appropriate Governmental Authorities, including any registrations and filings required by the IURC; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

(b) In furtherance (but not in limitation) of Section 7.2(a), Buyer and Seller shall each keep the other apprised of the status of matters relating to filings, Permits and Consents and completion of the Contemplated Transaction. Subject to applicable Law, each of Buyer and Seller shall have the right to review in advance, and, to the extent practicable, each shall consult the other on, all of the information relating to Buyer, Seller, the Business or the Assets, as the case may be, and any of their respective Affiliates, that appear in any filing made with, or written materials submitted to, any third party or any Governmental Authority in connection with the Contemplated Transaction. Buyer and Seller shall promptly make all filings and submissions with

Governmental Authorities under applicable Law that are necessary or advisable to consummate, or in connection with, the Contemplated Transaction. Seller, on the one hand, and Buyer, on the other hand, shall each, in connection with the efforts referenced in this Section 7.2 to obtain all requisite Permits and Consents for the Contemplated Transaction under applicable Law, use its reasonable best efforts to: (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any Proceeding initiated by a private party, in each case, regarding any such transaction; (ii) keep the other Party informed of any material communication received by such party from, or given by such party to, any Governmental Authority and of any communication received or given in connection with any Proceeding by a private party, in each case regarding any such transaction; (iii) subject to applicable Law, permit the other Party to review, in advance, any written communication given by it to or received from, and consult with each other in advance of any meeting or conference with, any Governmental Authority or, in connection with any Proceeding by a private party regarding any such transaction, any other Person, and to the extent permitted by any such Governmental Authority or other Person, give the other party the opportunity to attend and participate, and shall participate and attend upon the request of the other party, in such meetings and conferences subject to applicable Law; and (iv) shall, if requested by the other Party or any Governmental Authority, promptly provide information or respond to questions by such Governmental Authority in connection with the subject matter of this Agreement.

7.3 Certain Post-Closing Covenants of Seller.

Seller:

(i) shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed;

(ii) shall pay, or make adequate provisions for the payment, in full, of all of the retained Liabilities and other Liabilities of Seller under this Agreement;

(iii) hereby agrees to cooperate with Buyer to ensure a proper transition of all Assets and customers with respect to billing and customer service activities; and

(iv) shall not, in any way, attempt to directly or indirectly engage in the provision of sewer service to any property located (i) in the municipal boundaries of Buyer, (ii) within the Service Area; or (iii) within three (3) miles of Buyer's eastern, southern, or western corporate boundary without Buyer's written consent.

7.4 Customer Bills. Buyer and Seller shall prorate bills for services, as of the date of Closing, with Buyer responsible for and the sole owner of all billings to customers of the Business for service provided after Closing. In the event that, after the Closing Date, Seller receives monies from one or more customers representing payment for service provided after the Closing Date, Seller shall hold such monies in trust for Buyer and shall promptly, and in any event within not more than thirty (30) business days, remit such monies to Buyer. In the event that, after the Closing Date, Buyer receives monies from one or more customers representing payment for monthly sewer utility services provided prior to Closing, Buyer shall hold such monies in trust for Seller and shall promptly, and in any event within not more than thirty (30) business days, remit such monies to Seller.

ARTICLE 8

Indemnification; Limitations

8.1 Survival. All representations and warranties contained in this Agreement shall survive for a period of eighteen (18) months after the execution, delivery and performance of this Agreement, notwithstanding any investigation conducted at any time, except that representation and warranties made by Seller in Section 4.6 shall survive for a period of five (5) years from the Effective Time, and representations and warranties made by Seller in Section 4.7 for each respective Developer Contract shall survive for a period of five (5) years from the date of the respective Developer Contract. Any matter as to which a claim has been asserted by written notice to the other party that is pending or unresolved at the end of any applicable limitation period set forth in this Section shall continue to be covered by this Section notwithstanding any applicable statute of limitations (which the parties hereby waive) until such matter is finally terminated or otherwise resolved by the parties or by a court of competent jurisdiction and any amounts payable hereunder are finally determined and paid.

8.2 Indemnification by Seller. To the maximum extent permitted by applicable Law, Seller agrees to indemnify, defend and hold harmless Buyer and its respective employees, officers, directors, trustees and agents (the “Purchaser Indemnified Persons”), from and against any and all claims for Damages (each a “Claim”) arising from or relating to: (a) any breach of the representations and warranties in this Agreement; (b) the nonfulfillment of any of the covenants or agreements of Seller contained in this Agreement; (c) any claim related to Environmental Law arising or existing prior to the Closing; (d) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing, and (e) any third party claim against Buyer for claims, damages, and/or liability, whether for breach of contract, negligence, tort, or otherwise, arising from or related to the ownership, operation, or administration of the Business or ownership of the Assets prior to the Effective Time on the Closing Date and transfer of the Business to Buyer.

8.3 Indemnification by Buyer. To the maximum extent permitted by applicable Law, Buyer agrees to indemnify, defend and hold harmless Seller and its successors and Affiliates and their respective employees, officers, directors, trustees and agents from and against any and all claims arising from or relating to: (a) any breach of the representations and warranties in this Agreement; (b) the nonfulfillment of any of the covenants or agreements of Buyer contained in this Agreement; (c) any Assumed Liability; or (d) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing. Notwithstanding the foregoing or anything to the contrary contained herein, Seller hereby acknowledges and agrees that Buyer’s financial exposure for certain claims is limited by the Indiana Tort Claims Act, and Buyer’s obligation to indemnify and save Seller, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys’ fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code §34-13-3-4, as amended. Buyer shall not be obligated under this Section 8.3 with respect to any matter to the extent Seller is obligated to indemnify, defend or hold harmless Buyer therefrom under this Agreement.

ARTICLE 9

Termination

9.1 Termination and Abandonment. This Agreement may be terminated and abandoned at any time prior to the Closing Date:

- (a) by mutual written Consent of Buyer and Seller;
- (b) by Seller or Buyer, if the IURC does not approve the Contemplated Transaction without modification, condition, or exception, by November 17, 2021, or such other later date as agreed upon, in writing, by Buyer and Seller;
- (c) by Seller, if changes to Federal or State tax laws or other governmental or regulatory conditions substantially change so as to negatively affect the Contemplated Transaction (as determined in Seller's sole judgment); provided that Seller shall reimburse Buyer for its out-of-pocket expenses associated with the Contemplated Transaction not to exceed \$200,000;
- (d) by Buyer, in the event the Bond Proceeds are not made available at Closing to finance the Purchase Price pursuant to Section 6.1(h); provided that Buyer shall reimburse Seller for its out-of-pocket expenses associated with the Contemplated Transaction not to exceed \$200,000; or
- (e) in accordance with Section 2.3(c) or 6.2.

9.2 Effect of Termination. The right of each party to terminate this Agreement under Section 9.1 is in addition to any other rights such party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the Parties under this Agreement will terminate, except that the obligations set forth in Sections 10.9 (Legal Fees, Costs); and all other covenants and agreements which by their terms continue after the termination of this Agreement will survive; provided, however, that if this Agreement is terminated by a Party because of the breach of the Agreement by the other Party or because one (1) or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 10 General Provisions

10.1 Amendment and Modification. No amendment, modification, supplement, termination, Consent or waiver of any section or provision of this Agreement, nor any Consent for departure therefrom, will in any event be effective unless the same is in writing and is signed by the Parties. Any waiver of any provision of this Agreement and any Consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

10.2 Assignments. A Party may not assign or transfer any of its rights or obligations under this Agreement to any other Person without the prior written Consent of the other Party.

10.3 Captions. Captions contained in this Agreement and any table of contents preceding this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

10.4 Counterparts; Electronic Mail. This Agreement may be executed by the Parties hereto on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties hereto notwithstanding that all the Parties hereto are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted in .pdf format by electronic mail is to be treated as an original document. The signature of any Party thereon is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any Party hereto, the .pdf copy is to be re-executed in original form by the Party who executed the .pdf copy. No party hereto may raise the use of a .pdf copy or the fact that any signature was transmitted through the use of electronic mail as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section 9.4.

10.5 Entire Agreement. This Agreement and the other Transaction Documents constitute the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the Parties hereto, whether oral or written.

10.6 Exhibits and Schedules. All of the Exhibits and Schedules attached to this Agreement are deemed incorporated herein by reference.

10.7 Failure or Delay. Except as otherwise provided by this Agreement, no failure on the part of any Party hereto to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on any Party hereto in any case entitles such Party to any other or further notice or demand in similar or other circumstances.

10.8 Governing Law. This Agreement and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the Laws of the State of Indiana applicable to Contracts made and to be performed wholly within Indiana, without regard to choice or conflict of Laws rules, by a Court of Law located in Indiana.

10.9 Legal Fees, Costs. All legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transaction are to be paid by the Party incurring such costs and expenses; provided, however, in the event litigation is instituted by either Party to enforce or remedy a breach of any provision of this Agreement, in addition to any other relief therein awarded, the prevailing party shall be entitled to judgment for reasonable attorney's fees and litigation expenses. The term "prevailing party" shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

10.10 Notices. All notices, Consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person, (ii) three (3) days after deposited in the United States mail, first class postage prepaid, (iii) in the case of telegraph or overnight courier services, one (1) Business Day after delivery to the telegraph company or overnight courier service with payment provided, or (iv) in the case of electronic mail, when sent, verification received, in each case addressed as follows:

if to Seller:

Attn: Kendall W. Cochran
Hamilton-Southeastern Utilities, Inc.
11901 Lakeside Drive
Fishers, Indiana 46038
kcochran@hseutilities.net

with a copy to (which will not constitute notice):

Randy Seger
Dentons Bingham Greenebaum LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204
randy.seger@dentons.com

if to Buyer:

Attn: Scott Fadness, Mayor
City Hall, Administration
1 Municipal Drive
Fishers, IN 46038

with a copy to (which shall not constitute notice):

Attn: Christopher P. Greisl, City Attorney
City Hall, Administration
1 Municipal Drive
Fishers, IN 46038
greislc@fishers.in.us

or to such other address as any party hereto may designate by notice to the other Parties in accordance with the terms of this Section 10.10.

10.11 Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of any such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof, or affecting the validity, enforceability or legality of such provision in any other

jurisdiction, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the Contemplated Transaction to be unreasonable.

10.12 Specific Performance and Injunctive Relief. The parties hereto recognize that if any or all of them fail to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at Law may not provide adequate relief to the other parties hereto. Therefore, in addition to any other remedy provided for in this Agreement or under applicable Law, any party hereto may demand specific performance of this Agreement, and such party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time when any of the other parties hereto fail to comply with any of the provisions of this Agreement applicable to such party. To the extent permitted by applicable Law, all parties hereto hereby irrevocably waive any defense based on the adequacy of a remedy at Law which might be asserted as a bar to such party's remedy of specific performance or injunctive relief.

10.13 Successors and Assigns. Subject to Section 10.2, all provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the parties hereto and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

10.14 No Third-Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and no other Person has any right, benefit, priority or interest under, or because of the existence of, this Agreement.

10.15 Cooperation. Any notices or certifications given under this Agreement or any related agreement shall be given in good faith without any intention to unfairly impede or delay the other party. Buyer and Seller shall cooperate fully with each other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement including, without limitation, actions required to be taken with respect to obtaining any applicable regulatory approval of the Contemplated Transaction. Buyer and Seller shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement. Each party agrees to use all reasonable efforts to consummate the Contemplated Transaction including, without limitation, doing all things reasonably necessary to obtain the requisite regulatory approval.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Buyer

CITY OF FISHERS, INDIANA, an Indiana
municipal corporation

By: _____
 , Mayor

Seller

HAMILTON SOUTHEASTERN UTILITIES,
INC.,
an Indiana public utility corporation

By: _____

Name: _____

Title: _____

INDEX OF EXHIBIT AND SCHEDULES

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Exhibit A

Real Estate Service Area (Graphically)

Schedule 1 Definitions

“Affiliate” means, with respect to any Person, a Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, with control in such context meaning the ability to direct the management or policies of a Person through ownership of voting shares or other securities, pursuant to a written agreement, or otherwise.

“Appraiser” as defined in Section 2.3(b).

“Assets” as defined in Section 2.1.

“Agreement” as defined in the introductory paragraph.

“Assignment and Assumption Agreement” as defined in Section 2.6(a)(ii).

“Balance Sheet” as defined in Section 4.5(b).

“Balance Sheet Date” as defined in Section 4.5(b).

“Bankruptcy and Equity Exceptions” as defined in Section 4.2(b).

“Bill of Sale” as defined in Section 2.6(a)(i).

“Bond Proceeds” shall mean that portion of the net proceeds of the Bonds in an amount not to exceed the Purchase Price to be made available to Seller for the Assets.

“Bonds” shall mean sewer revenue bonds to be issued under Ind. Code §36-9-23 for the Assets.

“Business” as defined in the Recitals.

“Business Days” means any day other than (i) Saturday or Sunday, or (ii) any other day on which governmental offices in the State of Indiana are permitted or required to be closed.

“Buyer” as defined in the introductory paragraph.

“City Body or City Bodies” shall mean any of the City of Fishers Common Council, and/or the City of Fishers Board of Public Works & Safety, as applicable.

“Closing” as defined in Section 2.5.

“Closing Date” as defined in Section 2.5.

“Commitment” shall mean a title insurance commitment for an owner's policy of title insurance that: (a) is issued by the Title Insurer; and (b) commits to insure: (i) in the case of Buyer, marketable fee simple title to the Real Property in the name of Buyer (or applicable City Body) free of all Title Defects, other than those Title Defects that Buyer expressly waives in writing.

“Consent” means any approval, consent, ratification, waiver or other authorization.

“Contemplated Transaction” means all of the transactions contemplated by this Agreement and the Transaction Documents.

“Contract” means any written or oral binding contract, commitment, lease, license, mortgage, bond, note or other instrument, or other legally binding agreement, and all amendments thereto, but excluding any Permits.

“Customer Premises” means a dwelling, building, structure or parcel of real estate which is supplied with wastewater service through a Service Line.

“Customer Service Connection” means that portion of wastewater pipe extending from the Customer Premises to the curb box containing the curb service stop which Customer Service Connection shall be owned and maintained by the customer.

“Data” means the data relating to the Business as currently stored in an electronic format on computer servers operated by Seller, including financial, customer payment and billing information, customer service records, and maintenance records.

“Effective Date” as defined in the introductory paragraph.

“Effective Time” as defined in Section 2.5.

“Encumbrance” means, with respect to any property or asset, any charge, claim, community property interest, condition, easement, encumbrance, equitable interest, lien, mortgage, option, pledge, security interest, right of first refusal, right of way, servitude or restriction of any kind in respect of such property or asset, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership, or any repayment obligation under any grant.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental Law” means any Law that requires or relates to:

(a) Advising appropriate authorities, employees and the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) Preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment;

(c) Reducing the quantities, preventing the release or minimizing the hazardous characteristics of wastes that are generated;

(d) Assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

- (e) Protecting resources, species or ecological amenities;
- (f) Reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;
- (g) Cleaning up pollutants that have been Released, preventing the threat of Release or paying the costs of such clean up or prevention; or
- (h) Making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment, or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

“Escrow Account #1” as defined in Section 7.1(e)(viii).

“Escrow Account #2” as defined in Section 7.1(e)(ix).

“Excluded Assets” as defined in Section 2.2.

“Financial Statements” as defined in Section 4.5(a).

“Fraud” means an act, committed by a party, with intent to deceive another party and requires (a) a false representation of material fact made in Article 4 or Article 5 by such party; (b) with actual knowledge that such representation is false; (c) with an intention to induce the party to whom such representation is made to act or refrain from acting in reliance upon it; (d) causing that party, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action; and (e) causing such party to suffer material loss by reason of such reliance; provided, however, that for the avoidance of doubt, “Fraud” shall not include any type of constructive or equitable fraud.

“GAAP” means United States generally accepted accounting principles, as consistently applied.

“Governmental Authority(ies)” means any federal, state or local government located in the United States, including any political subdivision, departments, courts, commissions, boards, bureaus, ministries, agencies, or other instrumentalities of any of them.

“Hazardous Materials” means any pollutant, toxic substance, including asbestos and asbestos-containing materials, hazardous waste, hazardous material, hazardous substance, contaminant, petroleum and petroleum-containing materials, radiation and radioactive materials, leaded paints, toxic mold or other harmful biological agents, and polychlorinated biphenyls as defined in, the subject of, or that could give rise to Liability under any Environmental Law.

“Inspection Period” shall mean the period: (a) commencing on the Effective Date; and (b) ending not later than August 15, 2021.

“Intellectual Property Rights” means all of the following in all jurisdictions throughout the world: (i) patents, patent applications, patent or invention disclosures, design rights, and inventions (whether or not patentable and whether or not reduced to practice) and any reissue, continuation, continuation in part, division, extension or reexamination thereof; (ii) trademarks, trade names, service marks, trade dress, corporate names slogans and other indicia of source or

origin, together with all goodwill associated therewith, and all translations, adaptations, derivations and combinations of the foregoing (and all logos related to the foregoing), and all registrations and applications therefor; (iii) copyrights, copyrightable or copyrighted works and mask work, and all registrations and applications therefor; (iv) internet domain names and social media accounts; (v) trade secrets and other confidential information, ideas, know how, related processes and techniques, manufacturing processes, research and development information, drawings, specifications, formulas, designs, plans, proposals, technical data and manuals, internal business information, identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations, compilations of data and analyses, systems, records, reports, documentation, models, innovations, improvements, methods, designs, analyses, reports and all similar or related information; (vi) computer programs and software (including source code, object code, executable code, firmware, systems, tools, Data, databases, and related documentation) and software implementations of algorithms, models and methodologies; (vii) databases, (viii) moral rights and (ix) all other intellectual property and intangible properties.

“IURC” as defined in Section 2.5.

“Knowledge” means, with respect to an individual, that such individual is actually aware of a particular fact or other matter. A Person (other than an individual) will be deemed to have “Knowledge” of a particular fact or other matter if any individual who is serving as a director or officer of such Person (or in any similar executive capacity) has, or at any time had, Knowledge of such fact or other matter.

“Law” means any law, statute, rule, regulation, ordinance, order, decree, requirement, judgment, and code of any Governmental Authority.

“Lease” as defined in Section 4.4(b).

“Leased Real Property” as defined in Section 4.4(b).

“Liability” means, with respect to any Person, any liability or obligation of such Person, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

“Material Adverse Effect” means any change, condition or event that is materially adverse to the operations, results of operations or financial condition of the Assets or the Business, taken as a whole.

“Material Contracts” as defined in Section 4.7.

“Order” means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or by any arbitrator.

“Organizational Documents” means the articles or certificate of incorporation, the bylaws or other similar organizational or governing documents of a corporation and any amendment thereto.

“Owned Real Property” as defined in Section 4.4(a).

“Permits” as defined in Section 4.9(a).

“Permitted Encumbrance” means:

(a) Encumbrances in the nature of zoning restrictions, easements, rights or restrictions of record on the use of real property that do not materially impair the continued use of such property in the Business in the manner in which it is currently used;

(b) Encumbrances that will be fully and unconditionally discharged on or prior to the Closing Date;

(c) Intellectual Property Rights licenses of which Seller is a licensee and the license will transfer to Buyer; and

(d) other non-monetary and non-financial Encumbrances which would not, individually or in the aggregate, materially impair the continued use of such property and asset in the manner in which it is currently used in the reasonable determination of Buyer.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Authority.

“Proceeding” means any action, arbitration, hearing, litigation, suit, claim or other similar proceeding commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Property Inspections” shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

“Purchase Price” as defined in Section 2.3(a).

“Real Property” as defined in Section 4.4(b).

“Records” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including, without limitation, (i) all as-built surveys and sewer plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer studies, non-corporate accounting, and non-corporate business records and all other non-corporate information relating to the Business, in each case, controlled by or in the possession of Seller, (ii) all information required by applicable law to be maintained related to the Assets; (iii) all information provided to Buyer through the due diligence process; (iv) engineering project files; (v) electronic map files; (vi) plans for engineering projects; (vii) environmental files; (viii) developer files; (ix) daily operations logs; (x) operations files; (xi) any consents or administrative orders; (xii) service and warranty records; (xiii) database of customer accounts and customer records; and (xiv) updated fixed asset list.

“Related Person” with respect to a particular individual, means:

- (a) Each other member of such individual's Family (as hereinafter defined);
- (b) Any Person that is directly or indirectly controlled by such individual or one or more members of such individual's Family;
- (c) Any Person in which such individual or members of such individual's Family hold (individually or in the aggregate) a Material Interest; and
- (d) Any Person with respect to which such individual or one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

- (e) Any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person;
- (f) Any Person that holds a Material Interest in such specified Person;
- (g) Each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);
- (h) Any Person in which such specified Person holds a Material Interest;
- (i) Any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity); and
- (j) Any Related Person of any individual described in clause (b) or (c).

For purposes of this definition, (i) the "Family" of an individual includes (A) the individual, (B) the individual's spouse, (C) any other natural person who is related to the individual or the individual's spouse within the second degree, and (D) any other natural person who resides with such individual; and (ii) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least five percent (5%) of the outstanding equity securities or equity interests in a Person.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of Hazardous Materials into the environment (including, without limitation, the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials) and any condition that results in the exposure of a person to a Hazardous Materials.

"Seller" shall have the meaning given that term in the introductory paragraph.

"Service Area" as defined in the Recitals.

"Service Line" means that portion of wastewater pipe extending from the sewer main to and including the curb stop and curb box located at or near the property line of a Customer Premises.

“Systems” means the computer systems (including the computer software, firmware and hardware), telecommunications, networks, peripherals, platforms and other similar or related items of automated, computerized and/or software systems that are used or relied on by Seller in connection with its ownership and operation of the Business.

“Survey” shall mean an ALTA survey of the Real Property, certified as of a current date by a reputable licensed surveyor.

“Tangible Personal Property” means all collection, pumping, and treatment systems, including, without limitation, all trade fixtures, leasehold improvements, maintenance buildings, taps and manholes, life stations, pumps, generators, controls, tanks, distribution, collection, or transmission pipes or facilities, valves, service connections, and all other physical facilities, appurtenances, and property installations used in the operation or maintenance of the Business, equipment, tools, furniture, office equipment, computer hardware, supplies (including chemicals and spare parts), materials, vehicles and other items of tangible personal property of every kind owned or leased by Seller (wherever located and whether or not carried on Seller’s books), which are, could be, or in the future would be utilized to provide wastewater service to Seller’s wastewater customers, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, and all maintenance Records and other documents relating thereto.

“Tax” means (i) federal, state, or local taxes, charges, fees imposts, levies, or other assessments, including all net income, gross receipts, franchise, capital, sales, use, ad valorem, value added, transfer, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, fees, assessments, and charges of any kind whatsoever; (ii) all interest, penalties, fines, additions to tax, or additional amounts imposed by any Governmental Authority in connection with any item described in subsection (i); and (iii) any Liability for any item described in subsections (i) and (ii), payable by reason of Contract, assumption, transferee Liability, operation of Law, or otherwise.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“Title Agent” shall mean First American Title Insurance Company (Gina Longere).

“Title Defects” shall mean conditions or defects disclosed in the Commitment or the Survey that, in the reasonable determination of Buyer, materially and adversely will interfere with the construction and/or use of the Real Property, including, but not limited to, claims, liens, options, rights of first refusal or offer and other encumbrances and interests of any kind or nature whatsoever; provided that the lien of any mortgage or other security instruments to be released at or before the Closing shall not be a Title Defect nor shall Buyer or Seller have any obligation to cure any Title Defects. Encumbrances disclosed to and expressly approved in writing by Buyer or Seller, as applicable, shall not be deemed to be a Title Defect.

“Transaction Documents” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement and all other documents, certificates, assignments, instruments and agreements related to this Agreement or executed and delivered in connection with this Agreement, as the same may be amended, restated, modified or otherwise replaced by mutual agreement from time to time.

Rules of Construction

For purposes of this Agreement and the other documents executed in connection herewith, the following rules of construction shall apply, unless specifically indicated to the contrary: (i) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (ii) the term “or” is not exclusive; (iii) the term “including” (or any form thereof) shall not be limiting or exclusive; (iv) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (v) all references in this Agreement or in the Schedules to this Agreement to sections, schedules, exhibits and attachments shall refer to the corresponding sections, schedules, exhibits and attachments of or to this Agreement; and (vi) all references to any instruments or agreements, including references to any of the documents executed in connection herewith, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

Schedule 2.1(f) Contracts to be Assigned to Buyer

Developer Contracts as of Closing for the Service Area

Customer Sewer Agreements as of Closing for the Service Area

Schedule 2.2(f)
Cash, Cash Equivalents and Short-Term Investments – Excluded

Regions Bank – Operating Cash – Balance at Closing

Regions Bank – 2021 CIAC – Portion of Balance at Closing Needed by Seller to Pay Outstanding Income Taxes Owed by Seller on 2021 CIAC

Regions Bank – 2020 CIAC – Portion of Balance at Closing Needed by Seller to Pay Outstanding Income Taxes Owed by Seller on 2020 CIAC

Huntington Bank – Operating Payroll – Balance at Closing

Schedule 2.2(g)
Accounts Receivable – Excluded

1. monthly sewer service charges A/R balance at Closing.
2. preliminary plan review (PPR) fee balance at Closing.

Schedule 2.2(i)
SDC's and CIAC

Seller's SDC and CIAC balances as of the Effective Date ("CIAC Funds") shall be allocated as follows:

- (a) Seller shall retain that portion of the CIAC Funds as are required for income taxes due and owing by Seller for the year in which such CIAC Funds were collected; and
- (b) All other CIAC Funds shall be transferred to Buyer.
- (c) SDC and CIAC balances related to SDC funds collected after the Effective Date are subject to the requirements of Sections 7.1(e)(viii) and 7.1(e)(ix), whichever may apply.

Schedule 2.2(j)
Real Estate and Buildings – Excluded

Office building located at 11901 Lakeside Drive, including all improvements, furniture, fixtures computers, software and customer billing program.

Land, maintenance building and maintenance barn located at 12547 E. 136th Street, including all improvements, furniture fixtures, tools, computers, software, SCADA program, vactor truck, two Ford Transit camera trucks, Ford F750 crane truck, Kawasaki Mule, Jetter and all other vehicles.

40 acres land located at 0 East State Road 38, Noblesville, IN 46060.

Maintenance building located at 11793 Gatwick View, including all improvements, furniture, fixtures, computers, software and tools.

Schedule 2.2(1)
Data, Licenses, Technology and Records – Excluded

Certificate of Territorial Authority – Wayne Township

Certificate of Territorial Authority – Boone County

175 customers in HSE service area with Noblesville addresses consisting of 1,086 EDUs

GIS system

SCADA system

Customer billing program

Schedule 2.4
Buyer Assumed Liabilities

1. S.R. 37 Relocation Project
2. Developer Contracts as listed in the Report of Contracts Signed provided by Seller with a print date of May 17, 2021, and containing 89 pages. At Closing, Seller shall provide Buyer with an updated report which will reflect any developer contract entered into by Seller between the Effective Date and Closing.

Schedule 4.4(a)
Condemnation or Proceedings Affecting Real Property
Including Sewer Line Relocations

all sewer utility lines required to be relocated as a result of the SR 37 relocation project.

Schedule 4.4(c)
Description of Real Property

[To be inserted]

Schedule 4.6
Contested Taxes

None.

Schedule 4.7

Material Contracts

Developer Contracts

SAMCO Utility Services Agreement

Indianapolis Wholesale Agreement

City of Fishers Wholesale Agreements

ADS Flow Monitoring

SmartBill – Monthly Customer Statement Production and Mailing

Software Solutions – Customer Billing System

Accelerate, Inc. – IT Support

Customer Sewer Agreements

Service Agreements with Comcast

Service Agreements with Verizon

Wastewater Engineering Services Agreement between Wessler Engineering and SAMCO

2021 SR-37 Lift Station Agreement between Wessler Engineering and SAMCO

WIN-911 software license agreement with SAMCO (software add-on to SCADA system)

SAMCO licensing agreement with IT Pipes – video software platform for sanitary gravity sewers

Schedule 4.8
Environmental Matters Not In Compliance

None.

Schedule 4.9(a)
Material Permits

IURC CTA Cause Number	38685
	38819
	38897
	39567
	41528
	41745
	41752
	41798
	43435

Schedule 4.10(a)
Insurance Policies

Coverage	Carrier	Effective Date	Expiration Date
General Liability	Amerisure	12/30/2020	12/30/2021
Inland Marine	Amerisure	12/30/2020	12/30/2021
Work Comp	Amerisure	12/30/2020	12/30/2021
Umbrella	Amerisure	12/30/2020	12/30/2021
Exec Liability	Travelers	12/30/2020	12/30/2021
Equipment Breakdown	Liberty Mutual	12/30/2020	12/30/2021
Environmental & Professional	Tokio Marine	01/20/2021	01/20/2022

**Schedule 4.13
Proceedings Against Seller**

None.

Schedule 7.1(e)(vii)
Related Person Transactions

As disclosed in Seller's 2020 IURC Annual Report.